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NEW LAWS AFFECTING OPTOMETRY IN CALIFORNIA

The 2005 legislative session resulted in a number of important changes in laws that affect the practice and regulation of optometry in California. These new laws can be briefly summarized as follows:

- ◆ Changes in the Board's enforcement program,
- ◆ Modified information required on receipts for optometric goods and services and conditions when a receipt is required, and
- ◆ Repeal of the 30-day grace period for a delinquency fee.

The Board will publish a new law book that will incorporate all of the changes in laws and regulations in early 2006. In the meantime, the following summary of the most significant statutory changes is provided. The complete text of the bills can be viewed at the Board's website (www.optometry.ca.gov).

ASSEMBLY BILL 488 (BERMUDEZ)

Author: Assembly Member Rudy Bermudez

Sponsor: State Board of Optometry

Effective Date: January 1, 2006

Summary: The provisions of AB 488 are largely technical in nature and will streamline and modernize the codes governing the practice of optometry to reflect current practice and standard of care. The bill reorganizes the Optometry Practice Act for ease of reference and re-words the Act for clarity and consistency. In addition to the technical changes, AB 488 makes the following substantive changes to the Business and Professions Code:

- ◆ Section 3147 - 30-day grace period for delinquency fee is eliminated.
- ◆ Section 3076 - The information required on receipts for a payment of optometric goods and services is revised. Under the new law, a licensed optometrist shall deliver to each patient that makes a payment to the practice, excluding insurance co-payments and deductibles, a receipt that contains all of the following information:
 - ◆ His or her name
 - ◆ The number of his or her optometrist license
 - ◆ His or her place of practice.
 - ◆ A description of the goods and services for which the patient is charged and the amount charged.

NEW LAWS AFFECTING OPTOMETRY IN CALIFORNIA (cont.)

- ◆ Section 3091 - The board is authorized to issue a probationary license to an applicant subject to specified terms and conditions, and allows licensees to petition for modification of a probationary license after one year of probation.
- ◆ Section 3152 – Deletes the requirement that the Board submit a report to certain Legislative committees whenever the Board increases a fee.
- ◆ Section 3110 – The Board’s authority to take disciplinary actions or deny a license is clarified to include a number of expressly defined acts constituting unprofessional conduct including, but limited to, those listed below. This bill did not grant the Board additional authority to discipline optometrists. Rather, it reorganizes and more clearly states the Board’s authority to discipline optometrists for the following:
 - ◆ Violating, attempting to violate, or assisting in the violation of the Optometry Practice Act or any of the rules and regulations adopted by the Board.
 - ◆ Gross negligence.
 - ◆ Repeated negligent acts.
 - ◆ Incompetence.
 - ◆ Commission of fraud, misrepresentation, or any act involving dishonesty or corruption.
 - ◆ Discipline or conviction for acts substantially related to the practice of optometry.
 - ◆ Any action or conduct that would have warranted the denial of a license.
 - ◆ Participating in unlicensed activity, i.e., practicing with an expired license and practicing beyond the scope of the optometric license
 - ◆ Altering a license or using a fraudulently altered license issued by the Board
 - ◆ Use of false or misleading advertising relating to optometry.
 - ◆ Excessive substance abuse.
 - ◆ Repeated acts of excessive prescribing, treatment, or use of diagnostic or treatment facilities.
 - ◆ Prescribing, furnishing, or administering controlled substances or drugs or treatment without an examination of the patient and optometric reason.
 - ◆ Failure to refer a patient to an appropriate physician in either of the following circumstances:
 - ◆ Where an examination of the eyes indicates a substantial likelihood of any pathology that requires the attention of that physician.
 - ◆ As required by subdivision (c) of Section 3041.
 - ◆ Failure to maintain adequate and accurate records relating to the provision of services to patients.
 - ◆ Failure or refusal to comply with a request for the clinical records of a patient within 15 days.

NEW LAWS AFFECTING OPTOMETRY IN CALIFORNIA (cont.)

SENATE BILL 231 (FIGUEROA)

Author: Senator Liz Figueroa

Effective date: January 1, 2006

Summary: Business and Profession Code Section 802 currently provides that all settlements or arbitration awards over \$3,000 in a claim or action for damage for death or personal injury caused by negligence, error or omission in practice or by unauthorized rendering of professional services by an optometrist must be reported to the Board. Among other things, SB 231 amends Business and Professions Code Section 802 to including requiring any *judgment* in a malpractice action against an optometrist to be reported to the Board. Failure to comply with this requirement is considered a crime.

ASSEMBLY BILL 370 (AGHAZARIAN)

Author: Assembly Member Greg Aghazarian

Sponsor: California Optometric Association

Effective Date: January 1, 2006

Summary: AB 370 establishes statute of limitations for the Board to take disciplinary action against optometrists (Business and Professions Code Section 3137). With a few exceptions, any accusation filed against an optometrist shall be filed within three years after the Board discovers the act or omission alleged, or within seven years after the act or omission alleged, whichever occurs first. The exceptions to the statute of limitations listed above include cases alleging or involving:

- ◆ fraud or willful misrepresentation;
- ◆ incompetence, gross negligence, or repeated negligent acts if the licensee intentionally concealed his or her incompetence, gross negligence, or repeated negligent acts;
- ◆ sexual misconduct committed on a minor; and
- ◆ ongoing criminal investigation.

NEW LAWS AFFECTING OPTOMETRY IN CALIFORNIA (cont.)

3 REASONS TO RENEW YOUR LICENSE ON TIME

1. Practicing optometry with a delinquent license is a violation of the law and may result in disciplinary action.
2. Avoid delinquency fees.
3. Many employers, HMOs and credentialing agencies will not allow an optometrist with a delinquent license to practice optometry, and the Department of Health Services may suspend Medi-Cal payments for delinquent licensees.

EXISTING LAWS REGARDING PRESCRIPTIONS

Prescription Expiration Dates

- Business and Professions Code Section 2541.1 mandates that - unless there is a valid medical reason - spectacle prescriptions shall not expire less than two years from the date of issuance.
- Federal Contact Lens Rule mandates that - unless there is documented valid medical reason - contact lens prescriptions shall not expire less than one year from date of issuance.

Prescriptions must be given to Patients

The Federal Trade Commission adopted the Ophthalmic Practice Rules (Eyeglass Rule) and the Contact Lens Rule, which set forth national requirements for the release of eyeglass and contact lens prescriptions. According to these Rules, **all prescriptions for corrective lenses must be released to patients, whether requested or not.** Following is a brief description of the prescription release requirements:

- Eyeglass prescriptions must be given to the patient immediately following the eye exam
- Contact lens prescriptions must be given to the patient immediately upon completion of the eye exam or the contact lens fitting (if a fitting is necessary). If specialty lenses must be purchased in order to complete the fitting process, the charges for those lenses can be passed along to the patient as part of the fitting process.
- Contact lens fitting means the process that begins after an initial eye examination for contact lenses and ends when a successful fit has been achieved. In cases of renewal prescriptions, the fitting ends when the prescriber determines that no change in the existing prescription is required.
- If a patient elects to purchase contact lenses from a third party, the seller must verify the prescription before filling it. When requested, optometrists are required to respond to sellers' requests for prescription verification within eight business hours.

The Federal Contact Lens Rule preempts California law regarding the release of contact lens prescriptions, including exceptions carved out for specialty lenses and the 2 p.m. deadline established in AB 2020 (Chapter 814, Statutes of 2002). Additional information about the Federal Contact Lens Rule is posted on the Board's website at http://www.optometry.ca.gov/licensee_info.htm.